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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 BOARD OF TRUSTEES OF THE AUTOMOTIVE )	
INDUSTRIES WELFARE FUND, AUTOMOTIVE )	NO. <u>C 08 1594 JL</u>
12 INDUSTRIES PENSION FUND; JIM BENO, )	
TRUSTEE, )	<u>COMPLAINT</u>
13 )	
Plaintiffs, )	
14 )	
vs. )	
15 )	
16 L.A. SMITH & SONS INC., a California )	
corporation, )	
17 )	
18 Defendant. )	
19 _____ )	

20 Plaintiffs complain of defendant and for a cause of action  
21 allege that:

22 1. Jurisdiction of this Court is founded upon Section  
23 301(c)(1) of the National Labor Relations Act of 1947 [29 U.S.C.  
24 §185(a)] and Section 502 of the Employee Retirement Income Security  
25 Act of 1974, said Act being hereinafter referred to as "ERISA" (29  
26 U.S.C. §1132), in that defendant has violated a collective bargaining  
27 agreement and certain Trust Agreements, thereby violating provisions  
28 of ERISA and the provisions of the National Labor Relations Act of

1 1947. This action is also brought pursuant to the Federal Declaratory  
2 Judgment Act (28 U.S.C. § 2201 et seq.) in a case of actual  
3 controversy between plaintiffs and defendant, and for a Judgment that  
4 defendant pay fringe benefit contributions in accordance with its  
5 contractual obligations.

6 2. Plaintiffs, BOARD OF TRUSTEES OF THE AUTOMOTIVE  
7 INDUSTRIES WELFARE FUND, AUTOMOTIVE INDUSTRIES PENSION FUND,  
8 (hereinafter "TRUST FUNDS"), named in the caption, are trustees of  
9 employee benefit plans within the meaning of §§3(1) and (3) and  
10 §502(d)(1) of ERISA, 29 U.S.C. §1002(1) and (3) and §1132(d)(1), and  
11 a multi employer plan within the meaning of §§3(37) and 515 of ERISA,  
12 29 U.S.C. §§1002(37) and §1145. Plaintiff JIM BENO is a Trustee.  
13 Said TRUST FUNDS are authorized to maintain suit as independent legal  
14 entities under §502(d)(1) of ERISA, 29 U.S.C. §1132(d)(1).

15 3. Plaintiffs are informed and believe and thereupon  
16 allege that defendant, L.A. SMITH & SONS INC., is found and is doing  
17 business in this judicial district.

18 4. Each and every defendant herein is the agent of each  
19 and every other defendant herein. Defendant and each of them are  
20 engaged in commerce or in an industry affecting commerce.

21 5. At all times pertinent hereto defendant was bound by  
22 written collective bargaining agreements with East Bay Automotive  
23 Council-Machinists 1546 and Painters Local 1176, a labor organizations  
24 in an industry affecting commerce. The aforesaid agreements provide  
25 that defendant shall make contributions to the TRUST FUNDS on behalf  
26 of defendant's employees on a regular basis on all hours worked, and  
27 that defendant shall be bound to and abide by all the provisions of  
28 the Trust Agreements.

1           6. Defendant has breached both the provisions of the  
2 collective bargaining agreements and the Trust Agreements above  
3 referred to by failing to complete and send in monthly reports and/or  
4 to pay all moneys due thereunder on behalf of defendant's employees  
5 to the TRUST FUNDS. Said breach constitutes a violation of ERISA (29  
6 U.S.C. 1002, et seq.) and of the National Labor Relations Act of 1947.

7           7. Pursuant to the terms of the collective bargaining  
8 agreements there is now due, owing and unpaid from defendant to the  
9 TRUST FUNDS contributions for hours worked by covered employees found  
10 due by a payroll audit for the period November 1, 2001 through  
11 November 30, 2006 and liquidated damages, interest and testing fees  
12 which are specifically provided for by said agreements. The total  
13 amount due is \$722,732.89; additional amounts may become due during  
14 the course of this litigation and in the interest of judicial economy,  
15 recovery of said sums will be sought in this case. Interest is due  
16 and owing on all principal amounts due and unpaid at the legal rate  
17 from the dates on which the principal amounts due accrued.

18           8. Demand has been made upon said defendant, but defendant  
19 has failed and refused to pay the amounts due the TRUST FUNDS or any  
20 part thereof; and there is still due, owing and unpaid from defendant  
21 the amounts set forth in Paragraph 7 above.

22           9. An actual controversy exists between plaintiffs and  
23 defendant in that plaintiffs contend that plaintiffs are entitled to  
24 a timely monthly payment of trust fund contributions now and in the  
25 future pursuant to the collective bargaining agreements and the Trust  
26 Agreement, and defendant refuses to make such payments in a timely  
27 manner.

28           10. The Trust Fund does not at this time seek to audit the

1 books and records of defendant. The only issue raised in this  
2 complaint is defendant's failure to pay the correct amount of  
3 contributions due. The Trust Fund seeks to obtain a judgment for any  
4 outstanding delinquent contributions based on defendant's reports and  
5 to reserve the right to audit defendant for this or any other  
6 unaudited period.

7 11. The Trust Agreement provides that, in the event suit  
8 is instituted to enforce payments due thereunder, the defendant shall  
9 pay court costs and a reasonable attorneys' fee. It has been  
10 necessary for plaintiffs to employ ERSKINE & TULLEY, A PROFESSIONAL  
11 CORPORATION, as attorneys to prosecute the within action, and a  
12 reasonable attorneys' fee should be allowed by the Court on account  
13 of the employment by plaintiff of said attorneys.

14 WHEREFORE, plaintiff prays:

15 1. That the Court render a judgment on behalf of plaintiffs  
16 for all contributions due and owing to the date of judgment, plus  
17 liquidated damages provided for by the contract, interest at the legal  
18 rate, testing fees, reasonable attorneys' fees incurred in prosecuting  
19 this action and costs.

20 2. That the Court enjoin the defendant from violating the  
21 terms of the collective bargaining agreement and the Trust Agreements  
22 for the full period for which defendant is contractually bound to file  
23 reports and pay contributions to the TRUST FUNDS.

24 3. That the Court reserve plaintiffs' contractual right to  
25 audit defendant for months prior to judgment, and in the event of such  
26 audit, collect any additional sums which may be due.

27 4. That the Court retain jurisdiction of this cause pending  
28 compliance with its orders.

1           5. For such other and further relief as the Court deems  
2 just and proper.

3 DATED: March 20, 2008

ERSKINE & TULLEY  
A PROFESSIONAL CORPORATION

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6 By: /s/Michael J. Carroll  
Michael J. Carroll  
Attorneys for Plaintiffs  
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